

United States Court of Appeals
for the
District of Columbia Circuit



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

OCTOBER TERM, 1906.

No. 1697.

441

**GOLDEN BROWN, AN INFANT, BY JOHN S. B. BROWN,
HER NEXT FRIEND, APPELLANT,**

vs.

DISTRICT OF COLUMBIA.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED JULY 6, 1906.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

OCTOBER TERM, 1906.

No. 1697.

GOLDEN BROWN, AN INFANT, BY JOHN S. B. BROWN,
HER NEXT FRIEND, APPELLANT,

vs.

DISTRICT OF COLUMBIA.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print.
Caption	a	1
Declaration, &c.....	1	1
Demurrer.....	29	15
Notice to defendant of hearing of demurrer	30	16
Demurrer overruled	31	17
Plea of defendant.....	32	17
Joinder in issue.....	32	17
Memorandum: Verdict for defendant	33	18
Judgment, appeal, and penalty of appeal bond fixed.....	33	18
Memorandum: Appeal bond filed.....	34	18
Memorandum: Bill of exceptions submitted..	34	18
Bill of exceptions signed and made part of record.....	35	19
Bill of exceptions.....	35	19
Directions to clerk for preparation of record on appeal.....	44	23
Clerk's certificate.....	46	24

In the Court of Appeals of the District of Columbia

No. 1697.

GOLDEN BROWN, an Infant, &c., Appellant,
vs.
DISTRICT OF COLUMBIA.

a Supreme Court of the District of Columbia.

At Law. No. 44617.

GOLDEN BROWN, an Infant, by JOHN S. B. BROWN, Her Next
Friend,
vs.
DISTRICT OF COLUMBIA.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the city of Washington in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to-wit:—

1 *Declaration.*

Filed April 13, 1901.

In the Supreme Court of the District of Columbia.

At Law. No. 44617, Docket No. —.

GOLDEN BROWN, an Infant, by JOHN S. B. BROWN, Her Next
Friend,
vs.
DISTRICT OF COLUMBIA.

First Count.

1. The plaintiff Golden Brown, an infant of the age of eleven years, by John S. B. Brown, her next friend, sues the defendant the District of Columbia, a municipal corporation duly created by an Act of Congress of the United States of America, for that the defendant, before and at the time of the hereinafter mentioned wrongs and injuries suffered by the plaintiff, owned, possessed, controlled, used, occupied, kept and maintained a certain fire-engine house or build-

ing in the City of Washington, District of Columbia, of the height of, to wit, two stories, situate on the south side of M street, Northwest, between Thirty-second and Thirty-third streets, and known as Engine House No. 5, the second floor or story of which house or building was reached by means of a stairway from the first floor thereof, and in the front of the said house or building on the said second floor or story thereof was a certain room in which were located divers

2 windows from which the said M Street for a considerable distance East and West and in front of the said building could be

conveniently and advantageously viewed and seen; and in and upon the said front room of the said second floor or story, and between the entrance thereto from the said stairway and a certain hallway and one or more of the said windows, the defendant made, kept and maintained for a long period of time, to wit, five years, to wit, two circular holes, recesses or openings in the floor of the said room, each of the diameter of, to wit, six feet, without any guards or rails whatever around or about the same, or any other means whatever to protect those citizens, including the plaintiff, lawfully in and upon the said room on the said second floor or story, from great peril and injury from and by falling through the said holes, recesses or openings to the ground or first floor beneath the same to and of the distance of, to wit, twenty-three feet; and for that the defendant and the agents, employees and servants of the defendant, in the ownership, possession, control, use, occupation, keeping, maintaining and charge of and at the said building for a long period of time, to wit, five years, constantly, openly and notoriously, and on, to wit, the Ninth day of February, A. D. 1900, invited the public and divers persons, including among others the plaintiff and the members of the families of the agents, employees and servants of the defendant employed at, in or about the said house or building, to come or go into the said front room of the said second story of the said house or building to there visit them, and also to temporarily occupy and use the said room and the said front windows therein

3 for the purpose of overlooking and viewing the said M street therefrom, and particularly so to occupy and use the said room and windows upon occasion when any parade or procession was about to pass or was passing upon and along the said M

Street in front of the said house or building; of all of which the defendant had due notice; and it became and was the duty of the defendant and of its servants, agents and employees in and about the use of the said house, building, room or windows for the said purposes, and in accordance with the said invitation to the said persons, including the plaintiff, to exercise due and reasonable care in and for her and their protection from injury because of the said unguarded holes, recesses or openings in the said floor; and for that on, to wit, the Ninth day of February, A. D. 1900, a certain parade or procession was about to pass or was passing upon and along the said M street in front of the said engine house or building, and many persons, including the plaintiff, under the said invitation of the defendant, congregated and assembled in and upon the said second story front room and floor, and about and around the said front windows therein, to view the said parade or procession, and the plaintiff, intending to view said parade or procession from one of the said

windows, pursuant to the said invitation, went into the said room and upon the said floor, and, while going toward one of the said windows, and with due care and without any fault or negligence on her part, but solely through the negligence and carelessness of the defendant and of the agents, servants and employees of the defendant, in not providing guards or rails or other protection around or

about one of the said holes, recesses or circular openings, was
4 put in great peril of her life and limbs, and fell through one of the said holes, recesses or openings to and upon the ground or first floor beneath for and to a great distance, to wit, the distance of twenty-three feet, with great force and violence, and was severely frightened, hurt, wounded, bruised and permanently injured, and suffered a fracture of her left thigh bone just below the hip, and was so severely struck, wounded and injured that the plaintiff's said left leg became, was and ever since hath continued to be permanently painful, diseased, shortened and unsound, and her back greatly and permanently wounded and injured, and the plaintiff's nervous system was and hath continued to be shocked, hurt and grievously impaired and permanently injured, and by reason of the said several hurts and injuries the plaintiff hath suffered and continues to suffer great pain of body and mind, and became and was and is permanently hindered and prevented, physically and mentally, from attending to and performing her necessary affairs and duties, and of earning her livelihood and support, and is seriously and permanently injured in her bodily health and strength, and has incurred great expense for medical and other attendance in endeavoring to be relieved and cured of her said hurts, pain, suffering and injury, and continues to be and will be put to great expense for medical and other attendance during her whole life in and about the same, to the great damage of the plaintiff in the sum of Fifty Thousand Dollars.

Wherefore the plaintiff brings her suit, and claims damages in the sum of Fifty Thousand Dollars, besides the costs of this suit.

5

Second Count.

2. The plaintiff Golden Brown, an infant of the age of eleven years, by John S. B. Brown, her next friend, sues the defendant the District of Columbia, a municipal corporation duly created by an Act of Congress of the United States of America, for that the defendant before and at the time of the hereinafter mentioned wrongs and injuries suffered by the plaintiff, owned, possessed, controlled, used, occupied and maintained a certain fire engine house or building in the City of Washington, District of Columbia, of the height of, to wit, two stories, situate on the south side of M street, Northwest, between Thirty-second and Thirty-third Streets, and known as Engine House No. 5, the second floor or story of which said house or building was reached by means of a stairway from the first floor thereof, and in the front of the said house or building on the said second floor or story thereof was a certain room in which were located divers windows from which the said M street for a considerable distance East and West and in front of the said house or building could be conveniently and advantageously viewed and seen; and in and upon the said front room of the said second floor or story, and between the entrance

thereto from the said stairway and a certain hallway and one or more of the said windows, the defendant made, kept and maintained for a long period of time, to wit, five years, to wit, two circular holes, recesses or openings in the floor of the said room, each of the diameter of, to wit, six feet, without any guards or rails whatever around or about the same, or any other means whatever to protect those citizens, including the plaintiff, lawfully in and upon the said room on the said second floor or story, from great peril and injury from and by falling through the said holes, recesses or openings to and upon the ground or first floor beneath the same to and of the distance of, to wit, twenty-three feet; and for that the defendant and the agents, employees and servants of the defendant, in the ownership, possession, control, use, occupation, keeping, maintaining and charge of and at the said building for a long period of time, to wit, five years, constantly, openly and notoriously, and on, to wit, the Ninth day of February, A. D. 1900, invited the public and divers persons, including among others the plaintiff and the members of the families of the agents, employees and servants of the defendant employed at, in or about the said house or building, to come or go into the said front room of the said second story of the said house or building to there visit them, and also to temporarily occupy and use the said room and the said front windows therein for the purpose of overlooking and viewing the said M street therefrom, and particularly so to occupy and use the said room and windows upon occasion when any parade or procession was about to pass or was passing upon and along the said M Street in front of the said house or building; of all of which the defendant had due notice; and it became and was the duty of the defendant and of its servants, agents and employees in and about the use of the said house, building, room or windows for the said purposes, and in accordance with the said invitation to the said persons, including the plaintiff, to exercise due and reasonable care in and for her and their protection from injury because of the said unguarded holes, recesses or openings in the said floor; and for that on, to wit, the Ninth day of February, A. D. 1900, a certain parade or procession was about to pass or was passing upon and along the said M Street in front of the said engine house or building, and many persons, including the plaintiff, under the said invitation of the defendant, congregated and assembled in and upon the said second story front room and floor, and about and around the said front windows therein, to view the said parade or procession, and the plaintiff, intending to view said parade or procession from one of the said windows, pursuant to the said invitation, went into the said room and upon the said floor, and while going toward one of the said windows, and with due care and without any fault or negligence on her part, and without knowledge on her part of the presence and location of the said holes or openings, but solely through the negligence and carelessness of the defendant and of the agents, servants and employees of the defendant, in not providing guards or rails or other protection around or about one of the said holes, recesses or circular openings, was put in great peril of her life and limbs, and fell through one of the said holes, recesses or openings

to and upon the ground or first floor beneath, for and to a great distance, to wit, the distance of twenty-three feet, with great force and violence, and was severely frightened, hurt, wounded, bruised and permanently injured, and suffered a fracture of her left thigh bone

just below the hip, and was so severely struck, wounded and

8 injured that the plaintiff's said left leg became, was and ever since hath continued to be permanently painful, diseased, shortened and unsound, and her back greatly and permanently wounded and injured, and the plaintiff's nervous system was and hath continued to be shocked, hurt and grievously impaired and permanently injured, and by reason of the said several hurts and injuries the plaintiff hath suffered and continues to suffer great pain of body and mind, and became and was and is permanently hindered and prevented, physically and mentally, from attending to and performing her necessary affairs and duties, and of earning her livelihood and support, and is seriously and permanently injured in her bodily health and strength, and has incurred great expense for medical and other attendance in endeavoring to be relieved and cured of her said hurts, pain, suffering and injury, and continues to be and will be put to great expense for medical and other attendance during her whole life in and about the same, to the great damage of the plaintiff in the sum of Fifty Thousand Dollars.

Wherefore the plaintiff brings her suit, and claims damages in the sum of Fifty Thousand Dollars, besides the costs of this suit.

Third Count.

3. The plaintiff, Golden Brown, an infant of the age of eleven years, by John S. B. Brown, her next friend, sues the defendant, the District of Columbia, a municipal corporation duly created by an

Act of Congress of the United States of America, for that the

9 defendant, before and at the time of the hereinafter mentioned wrongs and injuries suffered by the plaintiff, owned, possessed, controlled, used, occupied, kept and maintained a certain fire-engine house or building in the City of Washington, District of Columbia, of the height of, to wit, two stories, situate on the south side of M Street, Northwest, between Thirty-second and Thirty-third Streets, and known as Engine House No. 5, the second floor or story of which house or building was reached by means of a stairway from the first floor thereof, and in the front of the said house or building on the said second floor or story thereof was a certain room in which the defendant made, kept and maintained for a long time, to wit, five years, to wit, two circular holes, recesses or openings in the said floor in the said room, each of the diameter to wit, six feet, without any guards or rails whatever around or about the same, or any other means whatever to protect those citizens and others, including the plaintiff, lawfully upon the said second floor and in the said room, from great peril and injury from and by falling through the said holes, recesses or openings to the ground or first floor beneath the same, to and of the distance of, to wit, twenty-three feet; and for that the defendant and the agents, employees and

servants of the defendant, in the ownership, possession, control, use, occupation, keeping, maintaining and charge of and at the said building, for a long period of time, to wit, five years, constantly, notoriously and openly, and on, to wit, February 9, A. D. 1900,

invited and permitted the members of the families of the firemen and others employed at or about the said building, to come or go upon the said floor of the said front room of the said second story to there visit them; of all of which the defendant had due notice; and it became and was the duty of the defendant and of its servants, agents and employees, in accordance with the said invitation or permission, to exercise due and reasonable care towards and to protect from injury the families of the said firemen and others, so visiting the said room, against the said unguarded recesses, holes or openings; and for that the plaintiff, on, to wit, the Ninth day of February, A. D. 1900, was a member of the family of one of the said firemen, and was lawfully in and upon the said premises and the said floor of the said second story front room on a visit to her father, one of the said firemen, pursuant to the said invitation and permission, and on the said, to wit, Ninth day of February, A. D. 1900, the plaintiff, then an infant of tender years, of, to wit, eleven years of age, while on the said floor and in the said room and using due and reasonable care, and without any fault or negligence on her part, but solely through the negligence and carelessness of the defendants, and the agents, servants and employees of the defendant, in not providing guards or rails or other protection around or about one of the said holes, recesses or circular openings, was put in great peril of her life and limbs, and fell through one of the said holes, recesses or openings to and upon the ground or first floor beneath, to and of a great distance, to wit, twenty-three feet,

with great force and violence, and was severely frightened, hurt, wounded, bruised and permanently injured, and suffered a fracture of her left thigh bone just below the hip, and was so severely struck, wounded and injured that the plaintiff's said left leg became, was and ever since hath continued to be permanently painful, diseased, shortened and unsound, and her back greatly and permanently wounded and injured, and the plaintiff's nervous system was and hath continued to be shocked, hurt and grievously impaired and permanently injured, and by reason of the said several hurts and injuries the plaintiff hath suffered and continues to suffer great pain of body and mind, and became and was and is permanently hindered and prevented, physically and mentally, from attending to and performing her necessary affairs and duties, and of earning her livelihood and support, and is seriously and permanently injured in her bodily health and strength, and has incurred great expense for medical and other attendance in endeavoring to be relieved and cured of her said hurts, pain, suffering and injury, and continues to be and will be put to great expense for medical and other attendance during her whole life in and about the same, to the great damage of the plaintiff in the sum of Fifty Thousand Dollars.

Wherefore the plaintiff brings her suit, and claims damages in the sum of Fifty Thousand Dollars, besides the costs of this suit.

12

Fourth Count.

4. The plaintiff Golden Brown, an infant of the age of eleven years, by John S. B. Brown, her next friend, sues the defendant the District of Columbia, a municipal corporation duly created by an Act of Congress of the United States of America, for that the defendant, before and at the time of the hereinafter mentioned wrongs and injuries suffered by the plaintiff, owned, possessed, controlled, used, occupied, kept and maintained a certain fire-engine house or building in the City of Washington, District of Columbia, of the height of, to wit, two stories, situate on the south side of M street, Northwest, between Thirty-second and Thirty-third Streets, and known as Engine House No. 5, the second floor or story of which house or building was reached by means of a stairway from the first floor thereof, and in the front of the said house or building on the said second story thereof was a certain room in which the defendant made, kept and maintained for a long time, to wit, five years, to wit, two circular holes, recesses or openings in the said floor in the said room, each of the diameter of, to wit, six feet, without any guards or rails whatever around or about the same, or any other means whatever, to protect those citizens and others, including the plaintiff, lawfully upon the said second floor and in the said room, from great peril and injury from and by falling through the said holes, recesses or openings to the ground or first floor beneath the same, to and of the distance of, to wit, twenty-three feet; and for that the defendant

and the agents, employees and servants of the defendant, in
13 the ownership, possession, control, use, occupation, keeping,
maintaining and charge of and at the said building, for a long period of time, to wit, five years, constantly, notoriously and openly, and on, to wit, the Ninth day of February, A. D. 1900, invited and permitted all members of the families of the firemen and others employed at or about the said building to come or go upon the said floor of the said front room of the said second story to there visit them; of all of which the defendant had due notice; and it became and was the duty of the defendant, and of its servants, agents and employees, in accordance with the said invitation and permission, to exercise due and reasonable care towards and to protect from injury the families of the said firemen and others, so visiting the said room, against the said unguarded recesses, holes or openings; and for that the plaintiff, on, to wit, the Ninth day of February, A. D. 1900, was a member of the family of one of the said firemen, and was lawfully in and upon the said premises and the said floor of the said second story front room, on a visit to her father, one of the said firemen, pursuant to the said invitation and permission, and on the said, to wit, Ninth day of February, A. D. 1900, the plaintiff, then an infant of tender years, of, to wit, eleven years of age, while on the said floor and in the said room, and using due and reasonable care, and without any fault or negligence on her part, and without knowledge on her part of the presence and

location of the said holes, recesses or openings, but solely through the negligence and carelessness of the defendant, and the agents, servants and employees of the defendant, in not providing
14 guards or rails or other protection around or about one of the said holes, recesses or circular openings, was put in great peril of her life and limbs, and fell through one of the said recesses, holes or openings to and upon the ground or first floor beneath, to and of a great distance, to wit, twenty-three feet, with great force and violence, and was severely frightened, hurt, wounded, bruised, and permanently injured, and suffered a fracture of her left thigh bone just below the hip, and was so severely struck, wounded and injured that the plaintiff's said left leg became, was and ever since hath continued to be permanently painful, diseased, shortened and unsound, and her back greatly and permanently wounded and injured, and the plaintiff's nervous system was and hath continued to be shocked, hurt and grievously impaired and permanently injured, and by reason of the said several hurts and injuries the plaintiff hath suffered and continues to suffer great pain of body and mind, and became and was and is permanently hindered and prevented, physically and mentally, from attending to and performing her necessary affairs and duties, and of earning her livelihood and support, and is seriously and permanently injured in her bodily health and strength, and has incurred great expense for medical and other attendance in endeavoring to be relieved and cured of her said hurts, pain, suffering and injury, and continues to be and will be put to great expense for medical and other attendance during her whole life in and about the same, to the great damage of the plaintiff in the sum of Fifty Thousand Dollars.

15 Wherefore the plaintiff brings her suit, and claims damages in the sum of Fifty Thousand Dollars, besides the costs of this suit.

Fifth Count.

5. The plaintiff Golden Brown, an infant of the age of eleven years, by John S. B. Brown, her next friend, sues the defendant the District of Columbia, a municipal corporation duly created by an Act of Congress of the United States of America, for that the defendant before and at the time of the hereinafter mentioned wrongs and injuries suffered by the plaintiff, owned, possessed, controlled, used, occupied, kept and maintained a certain fire engine house or building in the City of Washington, District of Columbia, of the height of, to wit, two stories, situate on the south side of M Street, Northwest, between Thirty-second and Thirty-third Streets, and known as Engine House No. 5, the second floor or story of which said house or building was reached by means of a stairway from the first floor thereof, and in the front of the said house or building on the said second floor or story thereof was a certain room in which were located divers windows from which the said M Street, for a considerable distance East and West and in front of the said house or building, could be conveniently and advantageously viewed and seen; and in and upon the said front room of the said second floor or story, and

between the entrance thereto from the said stairway and a certain hallway and one or more of the said windows, the defendant
16 made and kept, and maintained for a long time, to wit, five years, to wit, two circular holes, recesses or openings in the floor of the said room, each of the diameter of, to wit, six feet, without any guards or rails whatever around or about the same, or any other means whatever to protect those citizens, including the plaintiff and others, lawfully upon and in the said second floor and room, from great peril and injury from and by falling through the said holes, recesses or openings to and upon the ground or first floor beneath the same, to and of the distance of, to wit, twenty-three feet, and the said holes, recesses or openings were closed from beneath the same, at the time hereinafter mentioned, by means of certain doors, commonly called trap-doors, so insecurely fastened and constructed that a slight downward weight or pressure thereon would cause the same to open toward the said ground of first floor, and the said doors when shut excluded the light from the entrance of each of said holes, recesses or openings, so that their location was not easily but with difficulty discernible, and the closing of the said doors made the said holes, recesses or openings far more dangerous to the plaintiff, the public and others, than they were when open; and for that on, to wit the Ninth day of February, A. D. 1900, the said doors of and to the said holes, recesses or openings were in fact closed, and the said front windows of the said second story front room were shaded and occupied by divers citizens in and upon said premises, by reason of the invitation hereinafter set forth; and for that the defendant and the agents, employees and servants of the defendant, in the ownership, possession, control, use, occupation, keeping, maintaining and charge of and at the said building, for a long period
17 of time, to wit, five years, constantly, openly and notoriously, and on, to wit, February 9, A. D. 1900, invited the public and divers persons, including among others the plaintiff and the members of the families of the agents, employees and servants of the defendant, employed at, in or about the said house or building, to come or go into the said front room of the said second story of the said house or building, to there visit them and also to temporarily occupy and use the said room and the said front windows therein; of all of which the defendant had due notice; and it became and was the duty of the defendant and its servants, agents and employees in and about the use of said building for said purposes, and in accordance with the said invitation to the said persons, including the plaintiff, to exercise due and reasonable care in and for her and their protection from peril because of the said holes, recesses or openings; and for that on, to wit, the Ninth day of February, A. D. 1900, the plaintiff was a member of the family of one of said firemen at said engine house or building, and under and by the said invitation of the defendant was lawfully in and upon the said second story front room, and while going towards one of the said windows, and with due care and without any fault or negligence on her part, but solely through the negligence and carelessness of the defendant and the agents, employees and servants of the defendant in not providing guards or rails or other

protection around or about one of the said holes, recesses or circular openings, and in closing the said trap-doors thereto, was put in great peril of her life and limbs, and fell through one of the said holes, recesses or openings to the ground or first floor beneath, a great distance, to wit, twenty-three feet, with great force and violence, and was severely frightened, hurt, wounded, bruised and permanently injured, and suffered a fracture of her left thigh bone just below the hip, and was so severely struck, wounded and injured that the plaintiff's said left leg became, was and ever since hath continued to be permanently painful, diseased, shortened and unsound, and her back greatly and permanently wounded and injured, and the plaintiff's nervous system was and hath continued to be shocked, hurt and grievously impaired and permanently injured, and by reason of the said several hurts and injuries the plaintiff hath suffered and continues to suffer great pain of body and mind, and became and was and is permanently hindered and prevented, physically and mentally, from attending to and performing her necessary affairs and duties, and of earning her livelihood and support, and is seriously and permanently injured in her bodily health and strength, and has incurred great expense for medical and other attendance in endeavoring to be relieved and cured of her said hurts, pain, suffering and injury, and continues to be and will be put to great expense for medical and other attendance during her whole life in and about the same, to the great damage of the plaintiff in the sum of Fifty Thousand Dollars.

Wherefore the plaintiff brings her suit, and claims damages in the sum of Fifty Thousand Dollars, besides the costs of this suit.

Sixth Count.

6. The plaintiff Golden Brown, an infant of the age of eleven years, by John S. B. Brown, her next friend, sues the defendant, the District of Columbia, a municipal corporation duly created by an Act of Congress of the United States of America, for that the defendant, before and at the time of the hereinafter mentioned wrongs and injuries suffered by the plaintiff, owned, possessed, controlled, used, occupied, kept and maintained a certain fire engine house or building in the City of Washington, District of Columbia, of the height of, to wit, two stories, situate on the south side of M Street Northwest, between Thirty-second and Thirty-third Streets, and known as Engine House No. 5, the second floor or story of which said house or building was reached by means of a stairway from the first floor thereof, and in the front room of the said house or building on the said second story thereof was a certain room in which the defendant made and kept, and maintained for a long time, to wit, five years, to wit, two circular holes, recesses or openings in the said floor in the said room, each of the diameter of, to wit, six feet, without any guards or rails whatever around or about the same, or any other means whatever to protect those citizens and others, including the plaintiff, lawfully upon said second floor and in the said room, from great peril and injury from and by falling through the said holes, recesses or openings to the ground or first floor beneath the

same, to and of the distance of, to wit, twenty-three feet, and said holes, recesses or openings were closed from beneath the 20 same at the time hereinafter mentioned, by means of certain doors, commonly called trap-doors, so insecurely fastened and constructed that a slight weight or downward pressure thereon would cause the same to open towards the said ground or first floor, and the said doors when shut excluded the light from the entrance of each of the said holes or openings, so that their location was not easily but with difficulty discernible, and the closing of the said doors made the said holes, recesses or openings far more dangerous to the plaintiff, the public and others, than they were when open; and for that on, to wit, the Ninth day of February, A. D. 1900, the said doors to the said holes recesses or openings were in fact closed, and the said front windows of the said second story front room were shaded and occupied by divers citizens in and upon the said premises, by reason of the invitation hereinafter set forth; and for that the defendant and the agents, employees and servants of the defendant in charge of and at the said building, for a long period of time, to wit, five years, constantly, notoriously and openly, and on, to wit, the Ninth day of February, A. D. 1900, invited and permitted the members of the families of the firemen and others employed at or about the said building to come or go upon the said floor of the said front room of the said second story to there visit them; of all of which the defendant had due notice; and it became and was the duty of the defendant and of its servants, agents and employees, in accordance with the said invitation and permission, to exercise due and reasonable care towards, and to protect from injury, the families of the said 21 firemen and others, so visiting the said room, against the said unguarded recesses, holes or openings; and for that the plaintiff, on, to wit, the Ninth day of February, A. D. 1900, was a member of the family of one of the said firemen, and was lawfully in and upon the said premises and the said floor of the said second story front room on a visit to her father, one of said firemen, pursuant to the said invitation and permission, and on, to wit, the said Ninth day of February, A. D. 1900, the plaintiff, then an infant of tender years, of, to wit, eleven years of age, while on the said floor and in the said room, and using due and reasonable care, and without any fault or negligence on her part, and without knowledge on her part that the said holes or openings were closed by means of the said trap-doors, but solely through the negligence and carelessness of the defendant and the agents, servants and employees of the defendant in not providing any guards or rails or other protection around or about one of the said holes or circular openings, and in closing the said trap-doors thereto, was put in great peril of her life and limbs, and fell through one of the said holes, recesses or openings to the ground or first floor beneath, a great distance, to wit, a distance of twenty-three feet, with great force and violence, and was severely frightened, hurt, wounded, bruised and permanently injured, and suffered a fracture of her left thigh bone just below the hip, and was so severely struck, wounded and injured that her said left leg became, was and ever since hath continued to

protection around or about one of the said holes, recesses or circular openings, and in closing the said trap-doors thereto, was put in great peril of her life and limbs, and fell through one of the said

18 holes, recesses or openings to the ground or first floor beneath, a great distance, to wit, twenty-three feet, with great force and violence, and was severely frightened, hurt, wounded, bruised and permanently injured, and suffered a fracture of her left thigh bone just below the hip, and was so severely struck, wounded and injured that the plaintiff's said left leg became, was and ever since hath continued to be permanently painful, diseased, shortened and unsound, and her back greatly and permanently wounded and injured, and the plaintiff's nervous system was and hath continued to be shocked, hurt and grievously impaired and permanently injured, and by reason of the said several hurts and injuries the plaintiff hath suffered and continues to suffer great pain of body and mind, and became and was and is permanently hindered and prevented, physically and mentally, from attending to and performing her necessary affairs and duties, and of earning her livelihood and support, and is seriously and permanently injured in her bodily health and strength, and has incurred great expense for medical and other attendance in endeavoring to be relieved and cured of her said hurts, pain, suffering and injury, and continues to be and will be put to great expense for medical and other attendance during her whole life in and about the same, to the great damage of the plaintiff in the sum of Fifty Thousand Dollars.

Wherefore the plaintiff brings her suit, and claims damages in the sum of Fifty Thousand Dollars, besides the costs of this suit.

19

Sixth Count.

6. The plaintiff Golden Brown, an infant of the age of eleven years, by John S. B. Brown, her next friend, sues the defendant, the District of Columbia, a municipal corporation duly created by an Act of Congress of the United States of America, for that the defendant, before and at the time of the hereinafter mentioned wrongs and injuries suffered by the plaintiff, owned, possessed, controlled, used, occupied, kept and maintained a certain fire engine house or building in the City of Washington, District of Columbia, of the height of, to wit, two stories, situate on the south side of M Street Northwest, between Thirty-second and Thirty-third Streets, and known as Engine House No. 5, the second floor or story of which said house or building was reached by means of a stairway from the first floor thereof, and in the front room of the said house or building on the said second story thereof was a certain room in which the defendant made and kept, and maintained for a long time, to wit, five years, to wit, two circular holes, recesses or openings in the said floor in the said room, each of the diameter of, to wit, six feet, without any guards or rails whatever around or about the same, or any other means whatever to protect those citizens and others, including the plaintiff, lawfully upon said second floor and in the said room, from great peril and injury from and by falling through the said holes, recesses or openings to the ground or first floor beneath the

same, to and of the distance of, to wit, twenty-three feet, and said holes, recesses or openings were closed from beneath the 20 same at the time hereinafter mentioned, by means of certain doors, commonly called trap-doors, so insecurely fastened and constructed that a slight weight or downward pressure thereon would cause the same to open towards the said ground or first floor, and the said doors when shut excluded the light from the entrance of each of the said holes or openings, so that their location was not easily but with difficulty discernible, and the closing of the said doors made the said holes, recesses or openings far more dangerous to the plaintiff, the public and others, than they were when open; and for that on, to wit, the Ninth day of February, A. D. 1900, the said doors to the said holes recesses or openings were in fact closed, and the said front windows of the said second story front room were shaded and occupied by divers citizens in and upon the said premises, by reason of the invitation hereinafter set forth; and for that the defendant and the agents, employees and servants of the defendant in charge of and at the said building, for a long period of time, to wit, five years, constantly, notoriously and openly, and on, to wit, the Ninth day of February, A. D. 1900, invited and permitted the members of the families of the firemen and others employed at or about the said building to come or go upon the said floor of the said front room of the said second story to there visit them; of all of which the defendant had due notice; and it became and was the duty of the defendant and of its servants, agents and employees, in accordance with the said invitation and permission, to exercise due and reasonable care towards, and to protect from injury, the families of the said 21 firemen and others, so visiting the said room, against the said unguarded recesses, holes or openings; and for that the plaintiff, on, to wit, the Ninth day of February, A. D. 1900, was a member of the family of one of the said firemen, and was lawfully in and upon the said premises and the said floor of the said second story front room on a visit to her father, one of said firemen, pursuant to the said invitation and permission, and on, to wit, the said Ninth day of February, A. D. 1900, the plaintiff, then an infant of tender years, of, to wit, eleven years of age, while on the said floor and in the said room, and using due and reasonable care, and without any fault or negligence on her part, and without knowledge on her part that the said holes or openings were closed by means of the said trap-doors, but solely through the negligence and carelessness of the defendant and the agents, servants and employees of the defendant in not providing any guards or rails or other protection around or about one of the said holes or circular openings, and in closing the said trap-doors thereto, was put in great peril of her life and limbs, and fell through one of the said holes, recesses or openings to the ground or first floor beneath, a great distance, to wit, a distance of twenty-three feet, with great force and violence, and was severely frightened, hurt, wounded, bruised and permanently injured, and suffered a fracture of her left thigh bone just below the hip, and was so severely struck, wounded and injured that her said left leg became, was and ever since hath continued to

be permanently painful, diseased, shortened and unsound, and her back greatly and permanently wounded and injured, and her nervous system was and hath continued to be shocked, hurt and grievously impaired and permanently injured, and by reason of the said several hurts and injuries the plaintiff hath suffered and continues to suffer great pain of body and mind, and became and was and is permanently hindered and prevented, physically and mentally, from attending to and performing her necessary affairs and duties, and of earning her livelihood and support, and is seriously and permanently injured in her bodily health and strength, and has incurred great expense for medical and other attendance in endeavoring to be relieved and cured of her said hurts, pain, suffering and injury, and continues to be and will be put to great expense for medical and other attendance in endeavoring to be relieved and cured of her said hurts, pain, suffering and injury, and continues to be and will be put to great expense for medical and other attendance during her whole life in and about the same, to the great damage of the plaintiff in the sum of Fifty Thousand Dollars.

Wherefore the plaintiff brings her suit, and claims damages in the sum of Fifty Thousand Dollars, besides the costs of this suit.

Seventh Count.

7. The plaintiff Golden Brown, an infant of the age of eleven years, by John S. B. Brown, her next friend, sues the defendant the District of Columbia, a municipal corporation duly created by an Act of Congress of the United States of America, for that the defendant, at and before the time of the hereinafter mentioned wrongs and injuries suffered by the plaintiff, owned, or possessed, or controlled, or used, or occupied, or kept, or maintained a certain house or building, commonly known as a fire-engine house, in the 23 City of Washington, District of Columbia, of the height of, to wit, two stories, and situate on the south side of M Street, Northwest, between Thirty-second and Thirty-third Streets, and known as Engine House No. 5, the second floor or story of which said house or building was reached by means of a certain stairway running or leading from the first or ground floor or story thereof, and in the front of the said house or building on the said second floor or story thereof was a certain room in which were located divers and certain windows, from which the said M Street could be conveniently and advantageously viewed and seen for a considerable distance East and West from, and in front of, the said house or building; and in the said front room of the said second floor or story of the said building, and between the entrance to the said room (from the said stairway and a certain hall-way) and the said windows, the defendant made or cut, and kept and maintained for a long period of time, to wit, five years, prior to February 9, A. D. 1900, to wit, two certain circular holes, recesses or openings in the floor of the said room ,each of the diameter of, to wit, six feet, without any guards or rails or any other means whatever around or about the same to protect or warn those citizens, including the plaintiff, lawfully in and upon the said room and floor, from great peril and injury from and by falling into and through the said holes, recesses or openings to the

ground or first floor beneath the same to and of the distance of, to wit, twenty-three feet; and long prior to and on, to wit, the said Ninth day of February, A. D. 1900, the said holes, recesses or openings each had, to wit, two certain doors just beneath them to close them, 24 commonly called trap-doors, which, when closed, fastened, or operated, or were constructed so negligently or insecurely that a slight weight or downward pressure of, to wit, twenty-five pounds, would immediately force them open, and the said doors, when closed, excluded the light, which otherwise would focus and penetrate through the said holes, recesses or openings, and give warning to the plaintiff and others of their presence and location, and the said doors, when closed, greatly concealed the said holes, recesses or openings, and rendered their presence and location not easily, but with great difficulty, discernible, especially so by reason of the fact that prior to and on, to wit, the said Ninth day of February, A. D. 1900, the said floor was covered with a dark-colored carpet, said windows were partially covered with dark-colored roller-shades, and various articles of furniture and of other sorts, including cots, chairs, et cetera, were placed near the said holes, recesses or openings, the entrances to which were on the level with the said floor, and the said trap-doors were themselves of a dark color and of very frail construction, and the closing of the said trap-doors rendered the said holes, recesses or openings far more dangerous to the plaintiff, the public and all others in and upon the said room and floor, than the said holes, recesses or openings were when open; and for that on, to wit, the said Ninth day of February, A. D. 1900, the said holes, recesses or openings were closed by the said trap-doors, and the said windows in the said room were occupied by divers persons in and upon the said room and floor by the leave, license, knowledge, consent, permission or invitation of the defendant, or of its servants, agents, officers or employees; and for that the defendant, and its agents, officers, servants and employees, in the ownership, or possession, or control, or use, or occupation, or keeping, or maintaining or charge of the said house or building, for a long period of time prior to said February 9, A. D. 1900, to wit, five years, constantly, openly, publicly and notoriously, and on, to wit, the said Ninth day of February, A. D. 1900, allowed, licensed, consented to, permitted, or invited (with full knowledge of the defendant) the plaintiff, the public, and divers other persons, including the members of the families of the said agents, servants, officers and employees of the defendant employed in and about the said house or building, to come or go into the said second-story front room, and to there visit them, the said agents, servants, officers and employees, one of whom was then and there the father of the plaintiff and to temporarily use and occupy the said room and windows therein for the purpose of overlooking and viewing the said M Street therefrom, and particularly so to use and occupy the said room and windows upon occasion when any parade or procession was about to pass or was passing upon and along the said M Street in front of the said house or building; of all of which the defendant had due notice; and it became and was the duty of the defendant, and of its agents, officers, servants and employees, in and about the said house and

building, and in and about the use thereof for the said purposes, and in accordance with the said leave, license, knowledge, consent, permission, or invitation to the plaintiff, and others, to exercise
26 due and reasonable care in and for her and their protection from injury, from and because of the said unguarded, unprotected and dangerous holes, recesses or openings in the said floor; and for that on, to wit, the said Ninth day of February, A. D. 1900, a certain parade or procession was passing or was about to pass upon and along the said M Street in front of the said house or building, and the plaintiff, then and there being a daughter of one of said agents, officers, servants or employees of the defendant, and many other persons, under the said leave, license, knowledge, consent, permission or invitation of the defendant, or of its agents, officers, servants or employees, congregated and assembled in and upon the said room and floor, and about and around the said windows therein, to view the said parade or procession from one of the said windows, pursuant to the said leave, license, knowledge, consent, permission or invitation of the defendant, or of its agents, officers, servants or employees, went into and upon the said second-story front room and floor of the said house or building on, to wit, the said Ninth day of February, A. D. 1900, and while going toward one of the said windows, in ignorance on her part of the presence or location of the said holes, recesses or openings, or not then and there recalling or recollecting their presence or location, or then and there inadvertently forgetting their presence or location, especially by reason of the fact that the said trap-doors were then and there closed, or negligently closed, from beneath, and the said holes, recesses or openings
27 were on a level with the said floor, and were wholly unprotected and unguarded by rails, guards, ropes, or by any other means or in any other manner whatsoever for warning or protection, and without any fault or negligence on her part, but solely through the fault and negligence of the defendant, or of the agents, officers, servants or employees of the defendant in not providing gaurds, rails or ropes, or some or any other warning or protection whatever around or about one of the said holes, recesses or openings, was put in great peril of her life and limbs, and fell through one of the said holes, recesses or openings, to wit, the western one, to and upon the ground or first floor beneath for and to a great distance, to wit, the dictance of twenty-three feet, with great force and violence, and was severely frightened, hurt, wounded, bruised and permanently injured, and suffered a fracture of her left thigh bone just below the hip, and was so severely struck, wounded and injured that her left leg became and was and ever since hath continued to be permanently painful, diseased, shortened and unsound, and her back greatly and permanently wounded and injured, and her nervous system was and hath continued to be shocked, hurt and grievously impaired and permanently injured, and by reason of said hurts and injuries the plaintiff hath suffered and continues to suffer great pain of body and mind, and became and was and is permanently hindered and prevented, physically and mentally, from attending to and performing her necessary affairs and duties, and of earning her livelihood and support, and is

seriously and permanently injured in her bodily health and strength,
 and has incurred great expense for medical and other at-
 28 tendance in endeavoring to be relieved and cured of her
 said hurts, pain, suffering and injury, and continues to and
 will be put to great expense for medical and other attendance during
 her whole life in and about the same, to the great damage of the
 plaintiff in the sum of Fifty Thousand Dollars.

Wherefore the plaintiff brings her suit, and claims damages in the
 sum of Fifty Thousand Dollars, besides the costs of this suit.

THOMAS M. FIELD,
 MILTON STRASBURGER,
 DOUGLASS & DOUGLASS,
 E. H. THOMAS,
Attorneys for Plaintiff.

Rule to Plead.

The defendant is to plead hereto on or before the twentieth day,
 exclusive of Sundays and legal holidays, occurring next after the
 day of service hereof; otherwise judgment.

THOMAS M. FIELD,
 MILTON STRASBURGER,
 DOUGLASS & DOUGLASS,
 E. H. THOMAS,
Attorneys for Plaintiff.

29

Demurrer.

Filed May 3, 1901.

In the Supreme Court of the District of Columbia.

At Law. No. 44617.

GOLDEN BROWN, an Infant, by JOHN S. BROWN, Her Next Friend,
 Plaintiff,
 vs.
 THE DISTRICT OF COLUMBIA, Defendant.

Now comes the defendant, by its attorneys, and says that each
 count in plaintiff's declaration is bad in substance.

A. B. DUVALL,
 C. A. BRANDENBURG,
Attorneys for Defendant.

NOTE.—One of the points of law intended to be argued is that no
 one of the counts in the declaration sets forth a duty on the part of
 the defendant towards the plaintiff for the violation of which the
 defendant is responsible.

A. B. DUVALL,
 C. A. BRANDENBURG,
Attorneys for Defendant.

Messrs. Thos. M. Fields, Milton Strausburger, Douglas and Douglas,
E. H. Thomas, Attorneys for Plaintiff:

Please take notice that we have placed the foregoing demurrer on
the motion calendar in Circuit Court No. 2, and that we will
30 call it to the attention of Mr. Justice Clabaugh, on Friday,
May 10, 1901, at the opening of the Court, or as soon there-
after as counsel can be heard.

Very respectfully,

A. B. DUVALL,
C. A. BRANDENBURG,
Attorneys for Defendant.

Service accepted,

MILTON STRASBURGER,
Attorney for Plaintiff.

May 3, 1901.

Notice to Defendant of Hearing of Demurrer.

Filed February 5, 1904.

In the Supreme Court of the District of Columbia.

At Law. No. 44617.

GOLDEN BROWN, an Infant, by JOHN S. BROWN, Her Next Friend,
Plaintiff,
vs.

THE DISTRICT OF COLUMBIA, Defendant.

Mr Andrew B. Duvall, Corporation Counsel, Washington, D. C.

DEAR SIR: You will please take notice that the plaintiff by her attorney will call the demurrer filed in this cause by the said defendant to the attention of Mr. Justice Barnard, presiding in Circuit Court No. One, on Friday, the 12th day of February 1904,
31 at the hour of ten o'clock, in the forenoon, or as soon thereafter as counsel can be heard.

THOMAS M. FIELDS,
DOUGLASS & DOUGLASS,
LEVI H. DAVID,
Attorneys for Plaintiff.

Service of the foregoing notice acknowledged this the 5th day of February, 1904.

A. B. DUVALL,
Corporation Counsel,
Per G.

Supreme Court of the District of Columbia.

FRIDAY, February 12, 1904.

Session resumed pursuant to adjournment, Mr. Justice Barnard presiding.

* * * * *

At Law. No. 44617.

GOLDEN BROWN, &c., Pl'ff,
v.

DISTRICT OF COLUMBIA, Def't.

Upon hearing the demurrer to the declaration, it is considered that said demurrer be, and hereby is, overruled; with leave to the defendant to plead within ten days.

32

Plea.

Filed February 15, 1904.

In the Supreme Court of the District of Columbia.

At Law. No. 44617.

GOLDEN BROWN, an Infant, by JOHN S. B. BROWN, Her Next Friend,
Plaintiff,
vs.

THE DISTRICT OF COLUMBIA, Defendant.

The defendant for plea to the plaintiff's declaration, and each and every count thereof, says it is not guilty in manner and form as therein alleged.

A. B. DUVALL,
A. LEFTWICH SINCLAIR,
*Attorneys for Defendant.**Joiner in Issue.*

Filed February 16, 1904.

In the Supreme Court of the District of Columbia.

At Law. No. 44617.

GOLDEN BROWN, by Her Next Friend, JOHN S. B. BROWN, Plaintiff,
v.

THE DISTRICT OF COLUMBIA, Defendant.

The plaintiff hereby joins issue with the defendant upon
33 its plea filed herein.

THOMAS M. FIELDS,
DOUGLASS & DOUGLASS,
LEVI H. DAVID,
Attorneys for Plaintiff.

Memorandum.

April 23, 1906.—Verdict for defendants.

Supreme Court of the District of Columbia.

FRIDAY, May 4, 1906.

Session resumed pursuant to adjournment, Mr. Justice Wright, presiding.

* * * * *

At Law. No. 44617.

GOLDEN BROWN, an Infant, by JOHN S. B. BROWN, Her Next Friend,
Pl't'f,
vs.

DISTRICT OF COLUMBIA, Def't.

This case coming on to be heard upon the plaintiff's motion for a new trial, and the same having been heard, it is considered that said motion be and hereby is overruled, and judgment on verdict ordered;

Therefore it is considered that the plaintiff take nothing by his suit, and that the defendant go thereof without day, and
34 recover against the plaintiff's, next friend John S. B. Brown,
the costs of this defence, to be taxed by the Clerk and have execution thereof.

The plaintiff notes an appeal to the Court of Appeals and the bond for costs is fixed in the penalty of \$100.

Memorandum.

May 23, 1906.—Appeal bond filed.

Memorandum.

May 23, 1906.—Bill of exceptions submitted to court

Supreme Court of the District of Columbia.

FRIDAY, June 1, 1906.

Session resumed pursuant to adjournment, Mr. Justice Wright, presiding.

* * * * *

At Law. No. 44617.

GOLDEN BROWN, an Infant, by JOHN S. B. BROWN, Her Next Friend,
Pl't'f,
vs.

DISTRICT OF COLUMBIA, Def't.

Now comes the plaintiff by his Attorneys and pray- the Court to
sign, seal and make part of the record, his bill of exceptions,
35 taken during the trial of this cause (and heretofore sub-
mitted) now for then, which is accordingly done.

Bill of Exceptions.

Filed June 1, 1906.

In the Supreme Court of the District of Columbia.

At Law. No. 44617.

GOLDEN BROWN, an Infant, by JOHN S. B. BROWN, Her Next Friend,
Plaintiff,
vs.

DISTRICT OF COLUMBIA, Defendant.

Be it remembered that the above entitled cause came on for trial on April 23, 1906, before his honor Mr. Justice Wright, one of the Justices of the Supreme Court of the District of Columbia, and a jury was thereupon impaneled and sworn to try the issues joined between the plaintiff and the defendant, E. S. Douglas and Levi H. David appearing for the plaintiff, and Henry P. Blair, Assistant Corporation Counsel for the defendant. Whereupon one of the counsel for the plaintiff made an opening statement to the jury upon which the plaintiff based her cause of action, which said opening statement is as follows:

"If your honor please, and gentlemen of the jury, this is an action brought by Golden Brown, an infant, by John S. Brown, her father, for damages against the District of Columbia, and the plaintiff's case is about as follows:

36 "On the 9th day of February, 1900, in the afternoon of that day, Golden Brown, being about nine or ten years old, went to the engine house in Georgetown on M Street between 32nd and 33rd Streets, known as engine house No. 5, for the purpose of viewing the funeral procession of General Lawton, which was to pass that engine house that afternoon. This engine house had two stories, and on the second story of the engine house, it had been the custom of the families of the different firemen at this engine house to go whenever a parade or procession of any character was passing. Golden Brown is the daughter, as I say, of John Brown, who was employed at that time as a fireman. On that particular day Mr. Brown was off from his duties. He had been to his house and had had his

dinner and went to the engine house carrying two of his children there; Golden Brown, his little daughter, the plaintiff here, came home from school and had her dinner and learned that her father, brother and sister had gone to the engine house, and she went down there alone, and when she got to the engine house she went upstairs on the second floor or story as she had on a number of occasions before done, and went into this room where there were at least 15 or 20 persons, or probably more, some of whom were members of the families of the firemen at that engine house which faces on M Street between 32nd and 33rd Streets.

"In the floor of the second story of this engine house there are openings made for the purpose of permitting the firemen to go down what they call the greasy pole. It is—more than an open hole
37 and the pole that runs down from the second floor to the first floor, which enables the men to slide down this pole to get on the engine and go out whenever a fire occurs. In each hole there is a trap door arrangement that opens downwards, but stands just like this (indicating), as the evidence will show, and whenever the slightest pressure or weight is put upon this trap door, it, of course, opens. The hole comes right up in the center of these two doors that open in a downward manner, and they open just like that (indicating); and on this occasion for some unaccountable reason these doors had been left open. For some time previously say for three or four months previous to the 9th day of February, 1900, there were guard rails around these holes, put there for the purpose of keeping persons on that floor from falling into the holes. Several months, certainly three or four, before this accident happened, the District had repaired the floor on the second floor of this building, putting in new flooring. For some reason, we do not know why, these guard rails, or the chain with the little rails were taken down and never replaced, so that on the 9th day of February, 1900, these two circular holes or recesses were entirely unenclosed and entirely unprotected.

"It had been the custom, as I say, for a great many years, for the members of the families of the firemen to go in and upon the premises there. No objection was ever raised to it. In fact, there was an invitation extended to them as the evidence will show, either express or implied to come and go on that floor of the house. Golden Brown had been there many times before, and no objection was raised to
38 her being there, and on this occasion she went there for the purpose of viewing this parade. As she went into the room

on this afternoon, she saw her father over at the window, and as she walked over towards the window, she fell into this recess or hole, this opening in the floor down to the first floor of the building, a distance of 21 or 23 feet, I forget now which; either 21 or 23 feet. She was permanently hurt and injured, was unconscious for days, certainly four or five days, and suffered serious and permanent injuries, fractured her hip, and until this day one of her feet is shorter than the other, I think certainly an inch, and the evidence will show you that she walked on crutches for many months, had to stay away from school for a whole year, and suffered intense pain and agony.

"I think this is about the substance of the evidence on behalf of the plaintiff."

The court on his own motion, thereupon asked plaintiff's attorneys if the claim to a right of recovery was based upon a statute. To which inquiry counsel for the plaintiff replied in the negative and in reply to further inquiry then informed the court that the cause of action was based upon the theory that the District of Columbia as the owner of the real estate and as the owner of the premises where the accident occurred was liable upon the ground that the plaintiff was permitted by express or implied invitation, to come and go upon the premises and that the plaintiff was rightfully on the premises and not a trespasser, and that it was the duty of the defendant to see to it that she did not go into danger. The plaintiff further offered to prove that the defendant had for a number of years immediately prior to the accident in question, either by express or implied invitation, allowed the plaintiff as well as numerous other parties to go upon the premises. Thereupon the plaintiff requested and moved the court to allow her to introduce plaintiff's evidence to prove all the allegations of the declaration, which said request was refused by the court, and objection and exception were duly noted by the plaintiff, said exception was noted on the minutes of the presiding justice. Whereupon the court said:

"Certain general powers are vested in the sovereign, the government, among these general powers are those for the establishment of a police system, the establishment of penal institutions and places of correction, and the establishment of apparatus and paraphernalia to protect against fire. These are all classed as purely governmental powers, vested originally in the sovereign.

"In a state it is well settled that a municipality is no part of the political entity, the state; whereas counties and townships are political subdivisions of the state. The line is universally drawn that, inasmuch as the sovereign, the state, cannot be held liable for the negligence of officers or employees of the state except by statute authorizing suit, therefore no political subdivision of the state can be held liable in a suit for the negligence of its officials or employees unless there be a statute authorizing the action."

"If that distinction be borne in mind, it is perfectly manifest that the same rule must apply to municipal corporations, where, instead of vesting in local subdivisions of the state the power to exercise and perform purely governmental functions, those powers are for convenience vested in a municipal corporation. The municipality being required (having no choice in the matter) to exercise those purely governmental functions, no liability can attach to the corporation unless provided by statute. If the state cannot, in the absence of statute, be held liable, for injuries occasioned by measures taken for the establishment of fire apparatus, it follows that the municipality cannot be held liable for the negligence of those in charge of such apparatus maintained by the municipality at the direction of the sovereign.

"The same rule cannot apply to the establishment or maintenance of a market house as applies to the establishment or maintenance of a fire engine house and apparatus, because the municipality does not have to maintain the market house unless it desires to do so. The exercise of such a power comes within its executive discretion to

promote a purely local advantage from which it may or may not itself receive benefit. Not so with the exercise of the other powers mentioned, for the establishment of penal institutions, systems of policing, and fire departments.

"So, that, upon the facts conceded in the opening statement for the plaintiff, I do not see how this municipal corporation would be liable for the negligence of any one in connection with this trap door. The negligence of that person may be conceded, and yet it was the negligence of some employee of a municipality engaged in the exercise of purely governmental functions, and therefore it cannot be held liable for the negligence."

"Therefore, gentlemen of the jury, you can render a verdict for the defendant."

41 Thereupon the following proceedings were had:

Mr. DAVID: We note an exception to your honor's ruling. We also ask that we be allowed to introduce our proof in substantiation of the allegations of the declaration.

The COURT: You do not claim to be able to prove any facts other than those stated to the jury in your opening?

Mr. DAVID: I think I stated substantially to the jury all the facts upon which we rely, but, furthermore, I desire also to state that Mr. Justice Barnard overruled a demurrer to this declaration.

The COURT: I am not going to enter into any consideration of the question of whether a demurrer would be good or bad. I only want to know what you state you will prove as matter of fact.

Mr. DAVID: We expect to show that what we allege in the declaration is correct. I have already stated what the evidence on behalf of the plaintiff would show. I also state at this time that the record shows that Mr. Justice Barnard overruled the demurrer to the declaration.

Mr. DOUGLAS: In order that there may be no misunderstanding of the extent of our proof here, we now offer to prove that this hole in the floor was an exposed one, one so located that it would be exceedingly dangerous to one going into this house, and that it had been the custom there for years past to allow children, even of tender years—

The COURT: That has already been stated.

Mr. DOUGLAS: And we wish to offer to prove that.

42 The COURT: Yes, it was a trap door or hole used by the firemen to enable them to get downstairs in a hurry in responding to an alarm.

Whereupon the Court instructed the jury to render its verdict in favor of the defendant; to which said instruction and direction, plaintiff's counsel duly noted an exception on the foregoing grounds, and said exception was duly noted by the justice presiding on his minutes before the jury rendered its verdict for the defendant.

Whereupon the jury rendered its verdict for the defendant.

And because the matters and things hereinbefore recited are not of record, and because the plaintiff desires to present her exceptions to the Court of Appeals of the District of Columbia, the plaintiff moves the Court to sign and seal this said plaintiff's bill of excep-

tions to have the same force and effect as if each one of said exceptions was separately signed and sealed; which motion is by the Court granted, and the plaintiff moves the Court to make this bill of exceptions a part of the record in this cause, which motion is hereby granted and accordingly done, now for then, this 1st day of June, 1906.

DAN THEW WRIGHT, *Justice.* [SEAL.]

43 In the Supreme Court of the District of Columbia.

At Law. No. 44617.

GOLDEN BROWN, an Infant, by JOHN S. BROWN, Her Next Friend,
vs.

DISTRICT OF COLUMBIA, Defendant.

To Henry P. Blair, Esq., Assistant Corporation Counsel:

Attached hereto, you will find a copy of the plaintiff's proposed bill of exceptions in the above entitled case, the original of which was on May 23rd, 1906, handed to his Honor, Mr. Justice Wright, for consideration. Please take notice that we shall move the court on Friday, June 8th, 1906, at 10 A. M., or as soon thereafter as counsel can be heard, to settle, sign and seal said bill of exceptions.

DOUGLASS & DOUGLASS,
LEVI H. DAVID,
Plaintiff's Attorneys.

Service of foregoing bill of exceptions and notice hereby acknowledged this 23rd day of May, 1906.

H. P. BLAIR,
Assistant Corporation Counsel.
By E. H. T.

44 *Designation for Transcript of Record.*

Filed June 5, 1906.

In the Supreme Court of the District of Columbia.

At Law. No. 44617.

GOLDEN BROWN, by JOHN S. BROWN, Her Next Friend, Plaintiff,
vs.
DISTRICT OF COLUMBIA, Defendant.

JUNE 5, 1906.

Mr. John R. Young, Clerk.

DEAR SIR: Please exclude the following papers on file in the above entitled cause, in the transcript on appeal of said cause to the Court of Appeals:

. 24 GOLDEN BROWN, AN INFANT, ETC., VS. DISTRICT OF COLUMBIA.

1. Declaration.
2. Demurrer of defendant.
3. Notice of hearing of demurrer.
4. Order overruling demurrer and defendant to plead in ten days.
5. Plea of defendant.
6. Joinder in issue, notice of trial and note of issue. Calendar of cause.
- 6½. Memorandum of verdict.
7. Motion for new trial.
8. Order overruling said motion.
9. Judgment.

Memorandum Bond approved and filed.
45 10. Order making Bill of Exceptions part of record.
11. This precipe.

DOUGLAS & DOUGLAS,
LEVI H. DAVID,
Attorneys for Plaintiff.

Service of the foregoing hereby acknowledged this 5th day of June, 1906.

HENRY P. BLAIR,
Attorney for Defendant.

46 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 45, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed copy of which is made part of this transcript, in cause No. 44,617 At Law, wherein Golden Brown, an infant by John S. B. Brown, her next friend, is Plaintiff, and District of Columbia is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the city of Washington in said District, this 22 day of June, A. D. 1906.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1697. Golden Brown, an infant, &c., appellant, vs. District of Columbia. Court of Appeals, District of Columbia. Filed Jul. 6, 1906. Henry W. Hodges, clerk.

